

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SYNCPOINT IMAGING, LLC,

Plaintiff,

vs.

NINTENDO OF AMERICA INC., et al.,

Defendants.

No. 2:15-cv-00247-JRG-RSP

[Jury Trial Demanded]

**Opposed Motion For Leave To File Letter Brief
Requesting Leave To File Motion For Summary Judgment
On Grounds That Arose After The Letter-Brief Deadline**

Nintendo respectfully moves the Court for an order granting Nintendo relief from the December 7 deadline to file a letter brief requesting leave to file a summary-judgment motion. Nintendo's proposed letter brief is attached as Exhibit "1" to this motion.

Under the Docket Control Order (Docket No. 103), the deadline for filing and serving letter briefs requesting leave to file summary-judgment motions was December 7, 2015. Nintendo timely filed two letter briefs on December 7, but requests leave to file one more motion for summary judgment, seeking summary judgment of no damages.

The basis for Nintendo's new motion did not arise until December 17 when SyncPoint served its expert-witness report on damages. SyncPoint refused to respond to discovery requests seeking the basis for its damages theory against Nintendo. SyncPoint objected to Nintendo's attempts to take discovery regarding damages on the grounds that Nintendo sought early expert-witness discovery.

On December 17, SyncPoint served its expert-witness report on damages. As described in more detail in Exhibit 1, the report does not assert any damages theory against Nintendo, and thus, SyncPoint has no admissible evidence to prove damages against Nintendo. Because the grounds for Nintendo's proposed summary-judgment motion did not exist until December 17 when SyncPoint served its expert-witness report, Nintendo could not have filed its request for summary judgment by the December 7 deadline. Thus, Nintendo respectfully requests relief from the December 7 deadline to permit Nintendo to file its letter brief requesting leave to file a summary judgment motion of no damages.

Dated: December 21, 2015

Respectfully submitted,

By: /s/ Grant Kinsel
Grant Kinsel (lead attorney)
CA Bar No. 172407

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Attorneys for NINTENDO Co., LTD.
and NINTENDO OF AMERICA INC.

CERTIFICATE OF SERVICE

I certify that all counsel of record who are deemed to have consented to electronic service are being served this December 21, 2015 with a copy of this document via the Court's CM/ECF system pursuant to Local Rule CV-5(a)(3). Any other counsel of record will be served by facsimile transmission and/or first class mail.

/s/ Grant Kinsel
Grant Kinsel

CERTIFICATE OF CONFERENCE

I certify that counsel for Defendants Nintendo of America Inc. and Nintendo Co., Ltd. (collectively “Nintendo”) complied with the meet and confer requirement in Local Rule CV-7(h), and that the foregoing motion is opposed by Plaintiff SyncPoint Imaging, LLC (“SyncPoint”). Defendants PixArt Imaging, Inc., does not oppose the foregoing motion.

I further certify that on December 21, 2015, I had a telephone conference with Robert Aycock, counsel for SyncPoint. During the conference, Mr. Aycock said that he would get back to me by the end of the day about whether SyncPoint opposed the requested relief. I informed Mr. Aycock that, given the short time under the schedule, if he had not responded by the end of the day, I would assume that SyncPoint opposed the motion. Mr. Aycock did not respond by close of business December 21 as I had requested.

/s/ Grant Kinsel

Grant Kinsel